

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID SCOTT,

Plaintiff,

v.

Case No. 13-12781

Honorable Linda V. Parker

MARILYN BRADFORD, WILLIAM
MOLLISON, CHRISTOPHER CORRIVEAU,
MARTIN BAY, D. BISHOP, C. KOBEL,
L. LACEY, AND T. BRANDERVER,

Defendants.

**OPINION AND ORDER (1) ADOPTING MAGISTRATE JUDGE'S
SEPTEMBER 23, 2014 REPORT AND RECOMMENDATION [ECF NO.
70]; (2) DISMISSING PLAINTIFF'S COMPLAINT AGAINST
DEFENDANT D. BISHOP FOR FAILURE TO PROSECUTE PURSUANT
TO FEDERAL RULE OF CIVIL PROCEDURE 41; AND (3) DENYING AS
MOOT DEFENDANT BISHOP'S MOTION TO DISMISS [ECF NO. 65]**

Plaintiff David Scott commenced this civil rights action pursuant to 42 U.S.C. §§ 1983 and 1988 against Defendants on June 24, 2013. Plaintiff filed an amended complaint on December 10, 2013. At this time, Plaintiff's claims against all defendants, except Defendant Bishop, have been dismissed. Defendant Bishop filed a motion to dismiss on July 30, 2014. (ECF No. 65.) The matter has been referred for all pretrial matters to Magistrate Judge David R. Grand.

On September 2, 2014, Magistrate Judge Grand issued a show cause order due to Plaintiff's failure to file a timely response to Defendant Bishop's motion to dismiss. (ECF No. 68.) The order required Plaintiff to show cause in writing, on or before September 12, 2014, why the magistrate judge should not recommend that the complaint be dismissed due to Plaintiff's failure to respond to the motion. (*Id.*) Magistrate Judge Grand warned Plaintiff that his "[f]ailure to timely or adequately respond in writing to this Order to Show Cause, or to timely file a response to Bishop's motion to dismiss, may result in sanctions, up to and including a recommendation that Bishop's motion be granted and/or that Plaintiff's case be dismissed." (*Id.* at 2.)

When Plaintiff failed to respond to the show cause order, Magistrate Judge Grand issued a Report and Recommendation ("R&R") on September 23, 2014, recommending that the Court dismiss with prejudice Plaintiff's claims against Defendant Bishop pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. (ECF No. 70.) Magistrate Judge Grand therefore also recommends that the Court deny as moot Defendant Bishop's motion to dismiss. (*Id.*) At the conclusion of his R&R, Magistrate Judge Grand informs the parties that they must file any objections to the R&R within fourteen days. (*Id.* at 5.) He further advises that the

“[f]ailure to file specific objections constitutes a waiver of any further right of appeal.” (*Id.*, citations omitted). No objections were filed.

The Court has carefully reviewed the R&R and concurs with the conclusions reached by Magistrate Judge Grand. By failing to respond to Magistrate Judge Grand’s show cause order or Defendant Bishop’s motion to dismiss, Plaintiff has failed to prosecute this lawsuit and the action may be involuntarily dismissed pursuant to Federal Rule of Civil Procedure 41(b).¹ As set forth by Magistrate Judge Grand, the relevant factors favor dismissal as a result of Plaintiff’s failure to prosecute this action. (*Id.* at 3.) The Court therefore adopts Magistrate Judge Grand’s September 23, 2014 Report and Recommendation.

Accordingly,

IT IS ORDERED, that Plaintiff’s claims against Defendant Bishop are **DISMISSED WITH PREJUDICE** pursuant to Federal Rule of Civil Procedure 41(b);²

¹Notably, this is not the first instance where Plaintiff has failed to respond to a show cause order issued by Magistrate Judge Grand. (*See* ECF Nos. 63, 66.) Plaintiff’s failure to respond to a previous show cause order resulted in the dismissal of his claims against several defendants due to his failure to effectuate timely service of process on them. (ECF No. 69, *adopted in* ECF No. 69.)

²As Defendant Bishop is the last remaining defendant, the Court is entering a Judgment on this date.

IT IS FURTHER ORDERED, that Defendant Bishop's motion to dismiss (ECF No. 65) is **DENIED AS MOOT**.

S/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: October 22, 2014

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, October 22, 2014, by electronic and/or U.S. First Class mail.

S/ Richard Loury
Case Manager